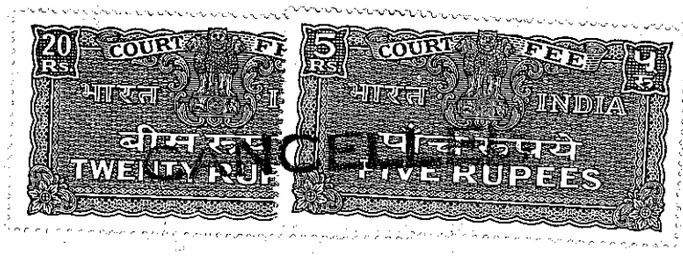

25/1617

IN THE HIGH COURT OF M.P. AT JABALPUR.

Writ petition No. 2811 of 1996.

PETITIONER .. HORILAL MARKAM
Age 43 years, S/o Shri Lakhanlal
Accountant, Krishi Upaj Mandi
BEMETARA, Distt.Durg.

VERSUS.

RESPONDENTS .. KRISHI UPAJ MANDI SAMITI
BEMETARA, TAHSIL BEMETARA
DISTT.DURG.

PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2811 of 1996

Petitioner Horilal Markam

Versus

Respondents Krishi Upaj Mandi Samiti, Bemetara

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ravindra Agarwal, Advocate for the petitioner.

Shri Ranbir Singh, Advocate for the respondent.

ORAL ORDER

(6th March, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner has filed this petition challenging the order dated 1.7.1996 (Annexure P/4) whereby the petitioner was demoted to the post of Nakedar(Assistant Sub Inspector) because the petitioner was not having the minimum qualification to be appointed on the post of Accountant.

2. The petitioner was appointed on the post of Chowkidar on 16.3.1970 thereafter he was promoted on the post of Nakedar on 12.1.1977, as the petitioner had passed 8th standard examination and he was qualified for appointment to the post of Nakedar. The respondent Samiti resolved in its meeting dated 12.2.1981 (Annexure R/1) to appoint the petitioner on the post of Accountant, without any terms and conditions. Consequently, by order dated 26.3.1981 (Annexure P/1) the petitioner was appointed on the post of Accountant, without any condition of passing High School Examination Certificate. Subsequently, by amended order dated 3.4.1981 (Annexure R/2)

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passed by the Chairman/Respondent Samiti, the petitioner was granted 1½ years' time to obtain High School Examination Certificate, failing which the petitioner would be reverted back to the post of Nakedar. This order was passed in compliance of the Samiti Resolution dated 12.12.1981. The Samiti resolution dated 12.12.1981 did not put any condition to the effect which was enforced by way of amended order dated 3.4.1981. According to learned counsel for the petitioner despite the amended order dated 3.4.1981 the petitioner was allowed to work as Accountant and the petitioner was not demoted to the post of Nakedar on completion of 1 ½ years period, as provided in the amended order. All of a sudden, without any notice or show cause, the petitioner was demoted to the post of Nakedar vide order dated 1.7.1996 (Annexure P/4).

3. Learned counsel for the petitioner submits that the order dated 1.7.1996 was passed without following the basic principles of natural justice and fair play in action. The impugned order visits with civil consequences which affects the petitioner adversely and the prejudice is caused to the person concerned. It is well settled principle of law that an order which affects the interest of an employee adversely cannot be passed without following the principle of natural justice and fair play in action. The Supreme Court in **Bhagwan Shukla Vs. Union of India and others** (AIR 1994 SC 2480) has held as under:-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without

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being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

4. Shri Ranbir Singh Marhas, learned counsel appearing for the respondent admits the fact that the petitioner was allowed to continue for 15 years despite the amended order dated 3.4.1981, which directed that if the petitioner failed to obtain Higher School Examination Certificate within 1½ years period, the petitioner would be liable to be demoted to the post of Nakedar. The fact of non compliance of the principle of natural justice was also admitted by learned counsel for the petitioner.

5. After having heard learned counsel for the parties and having perused the records appended to the petition, it is indisputably established that the petitioner was promoted on the post of Accountant without requiring either in the resolution or in the promotion order that the petitioner would be required to obtain High School Examination Certificate within the prescribed period. Even otherwise, the respondents have not followed its own amended order dated 3.4.1981 which provides for obtaining the High School Examination Certificate within one and a half years period by permitting the petitioner to work for about 15 years. By impugned order dated 1.7.1996 the petitioner was demoted to the post of Nakedar without affording any opportunity of hearing to the petitioner, who has acquired right to hold the post of Accountant by virtue of the appointment order dated 26.3.1981 and by continuing for 15 years thereafter on the post of Accountant. The impugned order has caused prejudice to the petitioner and the impugned order was passed in violation of the principle of natural

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justice. The Supreme Court in **Gajanan L. Pernekar Vs. State of Goa and another** { (1999) 8 SCC 378}, where identical facts were involved and there was a clear breach of the natural justice and violation of fair play and action, held that the benefit could not have been taken away without affording an opportunity of hearing.

6. For the reasons stated above the petition succeeds and is allowed accordingly. The impugned order dated 1.7.1996 is quashed. The petitioner is entitled to all the benefits.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Thakur